

taining from a lunatic a conveyance of his property, can be otherwise considered, than as being in itself the strongest and most conclusive evidence of fraud. Hence, as it would seem, if the injured party should state, that being of a weak mind, he was imposed upon and defrauded; the defendant has only to prove an aggravation of his own iniquity, by shewing that the plaintiff was, in truth, at the time, not merely weak, but actually *non compos mentis*, and he may be at once silenced by this maxim.

It is said, that a man should not be permitted to stultify himself, "because, when he recovers his memory, he cannot know what he did when he was *non compos mentis*." But this cause of the rule, as thus expressed, conveys a contradiction in terms, a solecism in itself. A man in madness is not himself; his mind is aliened and gone; the rational power has left his tabernacle, and is from home. It would be just as reasonable to say, that he who is absent from his dwelling, should not obtain redress for any injury done to it during his absence, because when he returned home he could not know what had been done there while he was abroad; as that a person should not obtain redress by stultifying himself, because he could not know what he had done during the time he was insane. It has been well said, that he who jests upon a man who is drunk, injures the absent. But an innocent and unfortunate person is much more really and totally absent from himself in his madness, than a man in his drunkenness. (*h*)

(*h*) Dr. Rush, in his observations on the diseases of the mind, has frequent recurrence to the poets for illustrations of the nature of madness; because, as he says, they view the human mind in all its operations, whether natural or morbid, with a microscopic eye; and hence many things arrest their attention, which escape the notice of physicians.—(*Rush on the Mind*, 158.) Shakspeare has been frequently referred to by writers on the subject of mental disorder.—(*Conolly Ind. Inst.* 319; *Coop. Med. Jur.* 291; 1 *Paris and Fomb.* 316, *note*.) Justinian quotes a passage from Homer to illustrate the nature of a donation *mortis causa*, (*lib. 2, tit. 7, s. 1,*) and Lord Coke allows, that to cite verses standeth well with the gravitie of our lawyers. (*Co. Litt.* 237.) I shall therefore feel myself justified in placing among the references some extracts from the poets, by way of illustration and in support of what I have said, in the text:

—"Poor Ophelia,
Divided from herself and her fair judgment,
Without the which, we are pictures, or mere beasts."
Hamlet, Act 4, s. 5.

"If Hamlet from himself be ta'en away,
And, when he's not himself, does wrong Laertes,
Then Hamlet does it not, Hamlet denies it.
Who does it then? His madness."
Hamlet, Act 5, s. 2.

By the Statute of 33 Hen. 8, c. 20, a person who had, while sane, committed high treason, and after became mad, might be tried in his absence, without making his personal appearance, &c. From which it may be in